



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,465	12/15/2003	Jason Chad Eubanks	16352-US	3466
30689 7590 09/23/2009 DEERE & COMPANY ONE JOHN DEERE PLACE MOLINE, IL 61265				
EXAMINER TORRES, ALICIA M				
ART UNIT 3671		PAPER NUMBER		
MAIL DATE 09/23/2009		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

*Ex parte* DEERE & COMPANY

---

Appeal 2009-005619  
Application 10/736,465  
Technology Center 3600

---

Decided: September 23, 2009

---

Before JAMESON LEE, RICHARD TORCZON, and  
SALLY C. MEDLEY, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

DECISION ON APPEAL

A. STATEMENT OF THE CASE

This is a decision on appeal by the real party in interest, Deere & Company (Deere), under 35 U.S.C. § 134(a) from a final rejection of claims 1 and 8. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

References Relied on by the Examiner

Scarnato et al. (Scarnato)            3,673,779            July 4, 1972

The Rejections on Appeal

The Examiner rejected claims 1 and 8 under 35 U.S.C. § 102(b) as anticipated by Scarnato.<sup>1</sup>

The Invention

The invention relates to crop mowing implements having rotary disc cutter bars and a crop-lifting arrangement for directing harvested crop to a crop processing device located on the mowing implement. (Spec. pp. 1-2; ¶¶ 1, 5, and 6.)

Independent claim 1 is reproduced below (App. Br. 5 Claims App'x)<sup>2</sup>:

1. In combination with

a mowing implement equipped with a rotary disc cutter bar having a gear housing extending transversely, relative to a forward direction of travel during mowing operation, and including a plurality of transversely spaced, knife-carrying rotary discs mounted, and being respectively driven, for rotating in desired directions above an upper surface of said gear housing for cutting and delivering crop into a discharge zone at the rear of the cutter bar,

a crop processing device located in said discharge zone just downstream from said cutter bar,

---

<sup>1</sup> Although page 3 of the Examiner's Answer indicates claim 7 was rejected as anticipated by Scarnato (Ans. 3:3), page 6 indicates that the rejection of claim 7 is withdrawn (Ans. 6:5). We regard the rejection as withdrawn.

<sup>2</sup> Claim 1 has been reproduced in a format that complies with 37 C.F.R. § 1.75(i).

and a crop-lifting arrangement for directing cut crop delivered by said rotary discs upwardly and rearwardly from said cutter bar so as to be in a favorable location for engagement by said crop processing device,

the improvement comprising:

said crop-lifting arrangement including a lip extending transversely across, and projecting substantially upright from, at least a rear region of said cutter bar located just forward of said crop processing device; and

said lip extending closely adjacent to, and to a height above, a path traced by knives of said knife-carrying rotary discs.

B. ISSUE

Has Deere shown that the Examiner was incorrect in finding that Scarnato discloses a lip that is “substantially upright”?

C. FINDINGS OF FACT

1. Scarnato discloses a harvesting machine for cutting and conditioning crops. (Scarnato 1:18-22.)



Scarnato's Figure 4 is reproduced below:

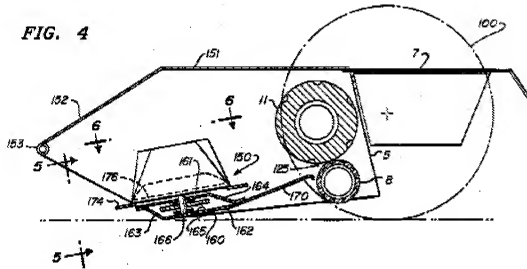


Figure 4 above depicts a harvesting machine.

For the issue on appeal, we need not determine the precise angle of incline beyond which a structure becomes “substantially upright.” At a minimum, a lip that is “substantially upright” must be more vertical than horizontal. Scarnato’s guide wall 170, however, is more horizontal than vertical. By the Examiner’s own stated definition of “upright” as meaning vertical, guide wall 170 is not substantially upright. It is incorrect to regard everything that is not flat or perfectly horizontal as substantially vertical.

We do not sustain the rejection of claims 1 and 8 as anticipated by Scarnato.

#### E. CONCLUSION

Deere has shown that the Examiner was incorrect in finding that Scarnato discloses a lip that is “substantially upright.”

F. ORDER

The rejection of claims 1 and 8 under 35 U.S.C. § 102(b) as anticipated by Scarnato is reversed.

REVERSED

saw

DEERE & COMPANY  
ONE JOHN DEERE PLACE  
MOLINE, IL 61265